

## **REMARKS**

### **I. Introduction**

With the addition of new claims 23 to 25, claims 12 to 25 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

### **II. Rejection of Claim 21 Under 35 U.S.C. § 112, Second Paragraph**

Claim 21 was rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite. The second paragraph of 35 U.S.C. § 112 merely requires that “the claims set out and circumscribe a particular subject matter with a **reasonable** degree of clarity and particularity.” M.P.E.P. § 2173.02 (emphasis added). It is respectfully submitted that claim 21 fully satisfies this requirement. Indeed, the Office Action does not even set forth any reason why claim 21 might be considered in any manner to be unclear.

To the extent that the present rejection might be based on a misapprehension of the distinct requirements of the first and second paragraphs of 35 U.S.C. § 112, the Examiner’s attention is respectfully directed, e.g., to original claim 11, to wit:

11. The communications device as recited in one of the preceding claims, wherein the position of the transmitting and receiving devices is displayable on a multifunction operating unit, the control element (3) being assigned to the multifunction operating unit.

Thus, it is unquestionable that claim 21 fully complies with the requirements of 35 U.S.C. § 112. In view of all of the foregoing, withdrawal of this rejection is therefore respectfully requested.

### **III. Rejection of Claims 12 to 22 Under 35 U.S.C. § 103(a)**

Claims 12 to 22 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 4,965,833 (“McGregor et al.”) and U.S. Patent No. 4,449,238 (“Lee et al.”). It is respectfully submitted that the combination of McGregor et al. and Lee et al. does not render unpatentable the present claims for at least the following reasons.

As an initial matter, the Examiner will note that claim 12 has been amended herein, without prejudice, to recite a control element configured to weight signal levels of at least one transmitter device. Claim 22 has been similarly amended. No new matter has been added.

The proposed combination of McGregor et al. and Lee et al. does not disclose, or even suggest, all of the features recited in amended claims 12 and 22. Claim 12, for example, relates to a communications device for transmitting acoustic signals in a motor vehicle, which includes, inter alia, a control unit configured to activate and deactivate transmitter devices, where the control unit is configured to activate only a transmitter device having a highest signal level; and the control unit is assigned at least one control element configured to weight signal levels of at least one transmitter device.

Nothing in either McGregor et al. or Lee et al. discloses, or even suggests, a control unit assigned at least one control element configured **to weight signal levels of at least one transmitter device**. The Office Action admits that this feature is not suggested by McGregor et al. Neither is it disclosed or suggested by Lee et al. Lee et al. do not disclose, or even suggest, a control element configured to weight signal levels of at least one transmitter device, as Lee et al. do not disclose, or even suggest, weighting signal levels of a transmitter device at all. Rather, Lee et al. describe only a threshold value over which the level of any microphone must rise before it is selected. However, the threshold is not associated with a microphone. In contrast, claim 12 provides for a control element to weight signal levels of a transmitter device. Since Lee et al. do not disclose, or even suggest, weighting signal levels of a transmitter device, Lee et al. also do not disclose, or even suggest, a control element configured to weight signal levels of a transmitter device.

In addition, nothing in either McGregor et al. or Lee et al. discloses, or even suggests, a control unit configured to activate **only** a transmitter device having a highest signal level. Again, the Office Action admits that the feature is not disclosed by McGregor et al. Lee et al. also do not disclose, or even suggest, such a control unit. Rather, Lee et al. specifically state that “[o]nce activated, a microphone will only change between the mixed state and selected state and not return to the off state.” Col. 5, lines 21 to 23. Thus Lee et al. describe activating every microphone

that once met a condition and do not disclose, or even suggest, activating only a transmitter device having a highest signal level.

In rejecting a claim under 35 U.S.C. §103(a), the Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 23 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art references must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

As explained above, the proposed combination of McGregor et al. and Lee et al. does not disclose, or even suggest, all of the features of claim 12. Therefore, it is respectfully submitted that the combination of McGregor et al. and Lee et al. does not render unpatentable claim 12.

As for claims 13 to 21, which depend from claim 12, it is respectfully submitted that the combination of McGregor et al. and Lee et al. does not render unpatentable these dependent claims for at least the reasons more fully set forth above.

As further regards claim 17, the Office Action admits in paragraph 5 that "McGregor as modified by Lee fails [sic] to disclose of time-delay elements configured to compensate for differences in propagation time arranged between the transmitter devices and the receiver devices." As such, it is plainly apparent that the Office Action itself recognizes that the combination of McGregor et al. and Lee et al. does disclose all of the features of claim 17 and therefore does not render unpatentable claim 17.

Claim 22 also relates to a communications device for transmitting acoustic signals in a motor vehicle and includes, inter alia, a controlling means for activating only a transmitting means having a highest signal level and a controlling means assigned at least one control element means for weighting signal levels of at least one transmitting means. Therefore, for at least the reasons given above in relation to claim 12, the proposed combination of McGregor et al. and Lee et al.

does not disclose, or even suggest, all of the features of claim 22. It is therefore respectfully submitted that the combination does not render unpatentable claim 22.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

**IV. Rejection of Claims 12 to 22 Under 35 U.S.C. § 103(a)**

The Office Action states that claims 12 to 22 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 4,965,833 ("McGregor et al."), U.S. Patent No. 4,449,238 ("Lee et al."), and PCT International Patent Application Publication No. WO 99/049698("Schaaf"). However, the remaining text under paragraph 5 of the Office Action refers only to claim 17. Thus, it is believed that only claim 17 is rejected based on the combination of McGregor et al., Lee et al., and Schaaf. Clarification is nevertheless respectfully requested.

It is respectfully submitted that the combination of McGregor et al., Lee et al., and Schaaf does not render unpatentable the present claims for at least the following reasons.

As explained above the proposed combination of McGregor et al. and Lee et al. does not disclose, or even suggest, all of the features of claim, from which claim 17 depends. Schaaf does not cure the critical deficiencies more fully set forth above with respect to the combination of McGregor et al. and Lee et al. Thus, it is respectfully submitted that the combination of McGregor et al., Lee et al., and Schaaf does not render unpatentable claim 17, which depends from claim 12.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

**V. New Claims 23 and 24**

New claims 23 to 25 have been added herein. It is respectfully submitted that claims 23 to 25 add no new matter and are fully supported by the present application, including the Specification.

Claims 23 and 24 depend from claim 12, and claim 25 depends from claim 22. Therefore, it is respectfully submitted that claims 23 to 25 are patentable over the references relied upon for at least the reasons more fully set forth above.

**VI. Conclusion**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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By: \_\_\_\_\_

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